LIN Television Corporation d/b/a WIVB-TV/WNLO-TV *and* National Association of Broadcast Employees and Technicians—Communications Workers of America, AFL–CIO. Case 03–CA–129811

August 27, 2015

ORDER[1]

BY MEMBERS HIROZAWA, JOHNSON, AND MCFERRAN

The Charging Party's Request for Special Permission to Appeal Administrative Law Judge Mindy Landow's ruling approving a unilateral non-Board settlement agreement is granted, and the appeal is granted on the merits. As the judge observed, the resolution of an unfair labor practice by a unilateral agreement proffered by a respondent and approved by a judge is not a true settlement between parties to the dispute, and has been described by the Board as a consent order. See *Electrical Workers*, *IUE Local 201 (General Electric Co.),* 188 NLRB 855, 857 (1971). When evaluating proposed consent orders, the Board has generally applied the factors set forth in *Independent Stave*, 287 NLRB 740, 741–742 (1987). See, e.g., *Food Lion, Inc.*, 304 NLRB 602, 602 fn. 4 (1991) (applying *Independent Stave* and finding the proposed consent order at issue inappropriate); *Copper State Rubber*, 301 NLRB 138, 138 (1991) (same).

The appropriateness of the consent order here must be considered against the backdrop of the Respondent's misrepresentation to Region 3 that it agreed that the 8(a)(5) and (3) allegations in the instant case should be deferred to arbitration—a representation later belied by the Respondent's contrary arguments to the arbitrator and its motion to stay the arbitration. Given this background, we find that the judge erred in accepting the proposed consent order over the objections of the Charging Party and the General Counsel. Specifically, in light of the Respondent's demonstrated efforts to avoid resolution of the deferred allegations, we find that the consent order's inclusion of a broad non-admission clause and the order's omission of the General Counsel's proffered notice language stating that the Respondent would not "attempt" to prevent, or "attempt" to interfere with, employees' exercise of their Section 7 rights preclude a finding that the consent order meets the standards set forth in *Independent Stave*.

IT IS ORDERED that the appeal is granted, that the agreement/consent order is set aside, and that this matter is remanded to the judge for further action consistent with this Order.

Dated, Washington, D.C. August 27, 2015

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HIROZAWA, concurring.

I agree with my colleagues that the judge erred in accepting the Respondent's unilateral "settlement," and I join them in granting the Charging Party's appeal on the merits. In my view, however, there is a more fundamental problem with the judge's order.

I acknowledge that the Board has applied the term "consent order" to orders accepting the settlement offer of one party without the agreement of any other party, but I would reconsider that practice. A consent order is essentially a settlement agreement that, with the consent of the parties, is entered as an order by a judge. Regardless of whether the order explicitly states that the parties have agreed to the terms, it is their agreement that forms the basis for the order. Here, there was no agreement on the terms of the order; the only party who consented was the Respondent. The order, therefore, is not a consent order. Nor is it a settlement agreement, because there is no agreement between or among any parties.

The *Independent Stave* factors are designed to evaluate true settlement agreements between parties other than the General Counsel. In *Independent Stave*, the respondent and three of the four charging parties reached a settlement, to which the General Counsel objected. The fourth charging party did not settle. The Board's decision addressed whether to grant summary judgment for the respondent as to the three charging parties who had settled, rather than proceeding to a hearing on the settled allegations. It was in that context that the Board set forth the factors for evaluating whether a settlement effectuates the purposes of the Act, and the Board applied those factors to the charging parties who had settled. The Board granted summary judgment as to those parties, but denied summary judgment as to the nonsettling charging

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

party and remanded the allegations concerning him to the Region. *Independent Stave*, 287 NLRB 740, 744 (1987).

Thus, in *Independent Stave*, the allegations that were not settled by a mutual agreement proceeded to a hearing. That result, in my view, was necessitated by the unfair labor practice procedures prescribed in the Act: a charge is filed and investigated; if the General Counsel finds the charge meritorious, he issues a complaint and notice of hearing; the charged party then has the right to appear in person and give testimony; and, if the Board finds that an unfair labor practice has been committed, it issues an appropriate order. See Secs. 3(b), 10(b), 10(c).

I fully support the Board's strong commitment to negotiated settlements and its policy of encouraging parties to resolve disputes peacefully and without litigation. See *Independent Stave,* supra, at 741. At the same time, it is well settled that "the Board's power to prevent unfair labor practices is exclusive," that "its function is to be performed in the public interest and not in vindication of private rights," and that "the Board alone is vested with lawful discretion to determine whether a proceeding, when once instituted, may be abandoned." Id. (internal quotations and citations omitted). We should not permit a judge to truncate the statutory procedures for adjudicating unfair labor practices in the absence of a settlement agreement entered into by the General Counsel, the charging party, or at least the alleged discriminatee, except for entry of an order, agreed to by the respondent, providing a full remedy for the alleged violations.

Dated, Washington, D.C. August 27, 2015

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Kent Y. Hirozawa, Member

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